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FIRST NAMED INVENTOR ATTORNEY DOCKET NO. FILING DATE CONFIRMATION NO. APPLICATION NO. 11/07/2001 10/045,221 David J. Poelker 194-26699-US

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PAUL S MADAN MADAN, MOSSMAN & SRIRAM, PC 2603 AUGUSTA, SUITE 700 HOUSTON, TX 77057-1130

EXAMINER TUCKER, PHILIP C

PAPER NUMBER ART UNIT

1712

DATE MAILED: 08/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## DOLLARS SUMMARY    The MAILING DATE of this communication appears on the cover sheet with the correspondence address   Period for Reply	2	Application No.	Applicant(s)	
Prilip C Tucker  The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Repty  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  If the MAILING DATE OF THIS COMMUNICATION.  If the MAILING DATE of THIS COMMUNICATION.  If the panol for reply specified above is less than thirty (30) days, a reply within the statusory minimum of thirty (30) days will be completed for the communication of the panol for reply specified above, the mainman statushor period magy that will expect to the maining date of the communication.  If the panol for reply specified above, the mainman statushor period magy that will expect the mainting date of the communication. If the panol for reply specified above, the mainman statushor period magy that will expect the mainting date of the communication, even if timely fled, may reduce any seamed pathet them adjustment. Peer 30 CPT 87-760.  Status  1) Responsive to communication(s) filled on	Office Action Summary	10/045,221	POELKER ET AL.	
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THE MAILING DATE OF THIS COMMUNICATION.  - Extractions of time may be wealble under the provisions of 37 CFR 1.138(a). In no event, however, may a reply be timely filled after SIX (0) MOSHS from the mailting date of this communication.  - If the period or reply specified done is less than thin (30) days, a risply within the statutory minimum of time; (30) days with a considered firmly.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 130).  - Pay reply received by the Office later than three months after the mailing date of this communication, even if timely filled, may reduce any earned patent term adjustment. See 37 CFR 1.79(b).  Status  1)				
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1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 4) Interview Summary (PTO-413) Paper No(s) 5) Notice of Informal Patent Application (PTO-152) 6) Other:	2) Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) Notice of Informal		

Art Unit: 1712

#### **DETAILED ACTION**

#### Election/Restrictions

- 1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - Claims 1-19, drawn to a copolymer and gelled acid, classified in class 507, subclass 120.
  - II. Claim 20, drawn to a method of preparing an acid gel, classified in class 524, subclass 829+.

The inventions are distinct, each from the other because of the following reasons:

- 2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the acid gel may be prepared by reacting the copolymer with an acid to form the salt.
- 3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
- 4. During a telephone conversation with Gene Tyler on 7/23/03 a provisional election was made with traverse to prosecute the invention of I, claims 1-19. Affirmation of this election must be made by applicant in replying to this Office action. Claim 20 is

Art Unit: 1712

withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### Claim Rejections - 35 USC § 112

- 6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

  The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
- 7. Claims 7-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7, the copolymer, and not the gelled acid, has the molecular weight of 1 to 10 million. Dependent claims fall herewith.

## Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

Art Unit: 1712

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
- 9. Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Borchardt (4558741).

Borchardt teaches a copolymer comprising the same monomers as the present invention (see claim 1). Applicants intended use to gel an acid does not distinguish (In re Pearson 181 USPQ 641).

10. Claims 1, 2, 4 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Gleason et al. (4626363).

Gleason teaches a copolymer of acrylamide and dimethylaminopropyl methacrylamide within the ratios of the present invention (see example 4). The rheology properties would indicate that the copolymers have molecular weights within the scope of the present invention.

11. Claims 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Furuno (4514551).

Furuno teaches copolymers of acrylamide and dimethylaminoethyl methacrylate used to form a an acidic polymer gel (see example 4, claim 1 and column 3, lines 50-

Art Unit: 1712

57). The method of making would form polymers within the scope of the molecular weight of the present invention.

12. Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Kaussen (4980437).

Kaussen teaches a copolymer comprising the same monomers as the present invention (see examples). Applicants intended use to gel an acid does not distinguish (In re Pearson 181 USPQ 641).

13. Claims 7-10 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Randen (5652296).

Randen teaches the forming of acidic gels of polymers which comprise the monomers of the present invention, within the scope of the ratios herein (column 7, lines 19-31 and claim 1). The method of making would form polymers within the scope of the molecular weight of the present invention.

14. Claims 3, 5, 6, 15-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip C Tucker whose telephone number is 703-308-0529. The examiner can normally be reached on Monday - Friday, Flexible schedule.

Art Unit: 1712

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Dawson can be reached on 703-308-2340. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Philip C Tucker Primary Examiner Art Unit 1712

PCT-2859 August 11, 2003